Supreme Court, U.S.
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No. 02-

IN THE

Supreme Court of the United States

LOUIS I. MUND and COLUMBIA GOLF CLUB, INC.,

Petitioners,

v.

REBECCA BROWN, as Special Representative for Ruth S. Reeves, Deceased,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where Rebecca Brown in her capacity as Special Representative for Ruth S. Reeves deceased pursued the pleading of Counterclaims for Breach Of Contract, Ejectment, and a Civil Rights Action pursuant 42 U.S.C. § 1983 with Affirmative Defenses of Fraud, Statute of Frauds, and Avoidance of Contract in response to Louis Mund and the Columbia Golf Course's claims to Quiet Title under Illinois Law:

Did the St. Clair County, Illinois Circuit Court, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court err when refusing to apply the proper Statute of Limitation for a Civil Rights Action under 42 U.S.C. Section 1983 and then allowing the application of Illinois State Law to dismiss all Counterclaims, strike all affirmative defenses, and enter Summary Judgment on the Quiet Title Claims?

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OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Fifth District affirming the Circuit Court was entered on June 19, 2002. Under the Illinois Supreme Court Rules the opinion was entered as an unpublished Rule 23 Order, and is reprinted in the appendix to this petition. App. 1a-25a. The Appellate Court of Illinois, Fifth District denied a timely Petition for Rehearing with an Order entered August 7, 2002 which is reprinted in the appendix to this petition. App. 31a-32a The Illinois Supreme Court denied a timely filed Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal with an Order entered December 5, 2002 which is reprinted in the appendix attached to this petition. App. 33a. The Illinois Supreme Court denied a timely filed Motion for Leave to File Motion for Reconsideration with an Order entered January 16, 2003 which is reprinted in the appendix attached to this petition. App. 34a.

The decision of the Circuit Court entered on November 30, 2000 granted: (1) Summary Judgment to Louis Mund and his corporation Columbia Golf Club, Inc. on two Counts of Quiet Title claims; (2) the dismissal with prejudice of three Counterclaims filed on behalf of Ruth S. Reeves (now deceased) for Breach of Contract, Ejectment, and a 42 U.S.C. § 1983 Civil Rights Action; and (3) the striking of the affirmative defenses plead on behalf of Ruth S. Reeves. A copy of the Circuit Court decision is reprinted in the appendix attached to this petition. App. 26a-30a.

STATEMENT OF JURISDICTION

The Supreme Court of Illinois entered its order on December 5, 2002 denying a timely filed Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal. Correspondingly, the Illinois Supreme Court entered its Order denying a timely filed Motion for Leave to file Motion for Reconsideration on January 14, 2003.

This Court has Jurisdiction to review the Rule 23 Order of the Appellate Court of Illinois, Fifth District affirming the Judgment of the Circuit Court and correspondingly this Court has Jurisdiction to review the aforementioned Orders of the Illinois Supreme Court under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The statutory provision at issue is reprinted in the appendix to this petition. 42 U.S.C. § 1983 at App. 35a.

STATEMENT OF THE CASE

A. Nature of the Case

This case involves in part allegations pursuant to 42 U.S.C § 1983 for lack of payment on numerous properties and to respond to Quiet Title actions on acreage in St. Clair County, Illinois when it is contended there was never any good faith basis under Illinois Law for color of title. In essence a group of properties in Monroe County, Illinois and St. Clair County, Illinois were alleged to be taken by Louis Mund and an attorney named Michael Frierdich. Frierdich was the attorney for the family of George Reeves

who died in 1979. Frierdich represented the estate of George Reeves and his widow Ruth Reeves. The Estate of Ruth Reeves through personal representative Rebecca Brown contended that Frierdich has managed through Mund to complete, only within the last few months, the taking of the property at issue. This property at issue once belonged to Ruth Reeves in a land trust of several hundred acres (known as Land Trust 5048) and a Golf Course where Ruth S. Reeves was the sole shareholder in the Missouri Corporation that owned the Golf Course (known as GRR Investment Co. Inc. which was involuntarily dissolved by Frierdich in 1983). Ruth Reeves, who is the widow of George Reeves, died in July 2000 and her daughter Rebecca Brown became her Special Representative for the instant litigation.

Louis Mund claimed color of title for property known as Lot 7A in St. Clair County, Illinois pursuant to him in March 1982 supposedly entering into a land sale contract with GRR Investment Co. Inc. for the sum of $1,000,000 plus 12% interest for the purchase of the Columbia Golf Course located in St. Clair County and Monroe County, Illinois. It is contended that issues of fact exist as to whether the signature of Ruth Reeves was forged on the land sale contract for the golf course. It is contended that there is no proof the entire sum of $1,000,000 plus 12% interest was ever paid. In fact it was not paid in full. Further it contended that the only way this transaction could have ever transpired is that Frierdich without any authorization fabricated the sale of the golf course.

Louis Mund also claimed color of title for property known as Lot 7A in St. Clair County, Illinois pursuant to him supposedly entering into a land sale contract in April 1982 for the purchase of several hundred acres of property

known as Land Trust 5048 for the sum of $400,000 plus 8.75% to 9.275% interest. It is contended that issues of fact exist as to whether the signature of Ruth Reeves was forged. It is contended there is no proof that the entire sum of $400,000.00 plus 8.75% to 9.275% interest was paid. Further, it is contended the only way this transaction could have been arranged was through attorney Michael Frierdich who prepared the purported land sale contract.

On March 4, 1993 an attorney named Arthur Morris sent a letter to Ruth Reeves demanding that she execute a quitclaim deed for the parcel of property commonly known as Lot 7A. Morris claimed on behalf of Louis Mund that Lot 7A had been accidentally omitted from the purported land sale contracts for Land Trust 5048 and the Columbia Golf Course. The supposed omission of Lot 7A occurred even though the letter from Morris clearly states that Lot 7A was owned individually by Ruth Reeves. Morris was a law partner with Michael Frierdich during part of the time he represented Ruth Reeves in the 1980s and she lived in Boca Raton, Florida.

In February 2000 Louis Mund and his Corporation Columbia Golf Club, Inc. filed a Quiet Title Action for Lot 7A in the Circuit Court of St. Clair County, IL. Counterclaims were filed on behalf of Ruth Reeves for Breach of Land Sale Contracts, Ejectment, and a Civil Rights action under 42 U.S.C § 1983. Louis Mund filed a Supplemental Affidavit with attachments on November 20, 2000 in the Trial Court to supposedly establish payment for the Land Trust 5048 property and the Columbia Golf Course. This, according to Mund, would establish color of title obtained in good-faith to claim adverse possession under 735 ILCS 5/13-109 and 110. The Supplemental Affidavit and attachments

supposedly establish payment to GRR Investment Co. Inc. and also payment for a mortgage financed through an entity known as Germania Federal Savings and Loan. The Supplemental Affidavit and attachments also reference the First National Bank of Columbia and Northwestern Bank and Trust in regard to GRR Investment Co. Inc. Further, referenced are checks and a supposed closing statement. Yet, the Supplemental Affidavit and attachments do not show payment even remotely close to $1,000,000 plus 12% interest for the Columbia Golf Course. Also, the Supplemental Affidavit of Mund shows that no payment whatsoever was made for the Land Trust 5048 property which required payment of $400,000 plus 8.75% to 9.275% interest. Subsequent, to the filing of the Supplemental Affidavit by Louis Mund the Trial Court on November 30, 2000 granted Summary Judgment on two Quiet Title Claims for Mund and his Corporation, dismissed with prejudice the Counterclaims originally plead on behalf of Ruth Reeves and had stricken the affirmative defenses originally plead on behalf of Ruth Reeves. The four page decision by the Trial Court was authored by the attorney for Louis Mund and then adopted by the Trial Judge. App. 26a-30a.

PROCEDURAL HISTORY

In 1994 a lawsuit was filed against Michael Frierdich by Ruth Reeves which was later voluntarily dismissed in the United States District Court for the Southern District of Illinois. An attorney named Jack Strellis filed the lawsuit in 1994 without disclosing to Ruth Reeves that one of his law partners was also the former law partner of Michael Frierdich. A settlement agreement was set aside in the lawsuit and attorney Jack Strellis withdrew from representing Ruth Reeves. Voluntary dismissal of the lawsuit was granted in

November 1997 and then a RICO action was filed on behalf of Ruth Reeves, Rebecca Brown (daughter of Ruth Reeves) and Timothy Reeves (grandson of Ruth Reeves) in May 1998 in the United States District Court for the Southern District of Illinois against several Defendants including Michael Frierdich and Louis Mund. In part the RICO action (18 U.S.C. §§ 1962, *et seq.*) concerned the properties supposedly sold to Mund. The RICO action was dismissed pursuant to Statute of Limitations and affirmed by the Seventh Circuit Court of Appeals. A Petition for Writ of Certiorari was denied by this Honorable Court in regard to the RICO action.

Also, in May 1998 a lawsuit was filed against Ruth Reeves, Rebecca Brown, and Timothy Reeves by the Stumpf Family of Monroe County, Illinois through their Land Trust S & S Land Trust one of the Plaintiffs in the lawsuit. Alan Stumpf (one of Ruth Reeves' former attorneys) and Kenneth Stumpf were also Defendants in the 1998 RICO action. The state lawsuit with the Stumpfs also concerns properties that the Reeves' family asserts were unlawfully taken. Stumpfs are attempting to Quiet Title on the property involved in the state lawsuit. The state lawsuit is still pending with a related interlocutory appeal before the Appellate Court of Illinois, Fifth District.

In February 2000 Louis Mund and his Corporation filed to Quiet Title on property he already claimed to own in the previous RICO action which was dismissed pursuant to Statute of Limitations. Ruth Reeves died in July 2000 and her daughter Rebecca Brown was appointed her Special Representative. The Trial Court in November 2000 granted Summary Judgment for Mund and his Corporation, dismissed with prejudice the Counterclaims originally plead on behalf

of Ruth Reeves, and had stricken the affirmative defenses originally plead on behalf of Ruth Reeves. App. 26a-30a The decision of the Trial Court was affirmed by the Appellate Court of Illinois, Fifth District in June 2002. App. 1a-25a. A Petition for Rehearing was also denied by the Appellate Court of Illinois, Fifth District in August 2002. App. 31a-32a. The Supreme Court of Illinois then denied leave to Appeal on December 5, 2002 and denied leave to file a Motion for Reconsideration on January 21, 2003. App. 33a-34a The instant Petition for Writ of Certiorari has been timely filed pursuant to each Illinois State Court refusing to apply the correct Statute Limitation for a Civil Rights Action under 42 U.S.C. § 1983 and the erroneous application of nonfederal grounds.

REASONS FOR GRANTING THE WRIT

I.

IF NOT REVERSED BY THIS HONORABLE COURT THE ILLINOIS SUPREME COURT'S ORDERS, THE APPELLATE COURT OF ILLINOIS FIFTH DISTRICT RULE 23 ORDER, AND THE JUDGMENT ENTERED BY THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS WILL ALLOW AN ERRONEOUS INTERPRETATION OF THE STATUTE OF LIMITATION FOR A CIVIL RIGHTS ACTION UNDER 42 U.S.C. § 1983 TO STAND IN DIRECT CONTRADICTION WITH THE HOLDING IN *WILSON v. GARCIA*, 471 U.S. 261 (1985) AND ALSO ALLOW TO STAND ERRONEOUS ILLINOIS STATE LAW RULINGS WHICH PRECLUDE A VALID FEDERAL CAUSE OF ACTION.

A. Legal Standard

There is no dispute that the Statute of Limitation for a 1983 Civil Rights action is determined by the length of the Personal Injury Statute where the cause of action arose. *Wilson v. Garcia*, 471 U.S. 261 (1985). There is no dispute that the cause of action arose in the State Of Illinois where under 735 ILCS 5/13-202 the limitation period for a Personal Injury Action is two years. Louis Mund and his Corporation brought erroneous Quiet Title actions on February 10, 2000 and then on behalf of Ruth Reeves three Counterclaims including a 1983 Civil Rights action in July 2000 were filed. Normally, a State entity or its individual employees are sued in a Section 1983 action. However, private parties that invoke a defective statutory scheme can be found to be acting under

color of state law and denying a constitutional right. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982). Here, the requisite allegations were plead in Counterclaim III to state a cause of action Correspondingly, there is no bar to Counterclaim III based on the two year limitation period. Further, the granting of a Judgment pursuant to Illinois Common Law and Statutory Law should not have precluded litigation of the 42 U.S.C. § 1983 Civil Rights action. The adequacy of the state-law ground to support a judgment precluding litigation of the federal claim is itself a federal question subject to de novo review. *Howlett v. Rose*, 496 U.S. 356, 365 (1990).

B. Section 1983 Civil Rights Action in Counterclaim III

The Circuit Court of St. Clair County, Illinois adopted a Findings of Fact and Conclusions of Law that was drafted by the attorney for Louis Mund. App. 26a-30a. Specifically, the Trial Court found that the Counterclaim did not state a cause of action because there was no claim of malicious abuse in the facts alleged by Ruth Reeves. However, the Counterclaim plead by Ruth Reeves met the pleading standards for a 1983 action. Specifically, in Counterclaim III it was plead that Louis Mund by filing suit on or before February 10, 2000 with his corporation Columbia Golf Club Inc. became a private entity acting under the color of state law via the defective procedures of Statute [735 ILCS 5/2-103(b), Quiet Title Venue Statute]. Additionally, plead was the erroneously brought Quiet Title Actions were to unlawfully and unconstitutionally deny and deprive Ruth S. Reeves of her right to preserve her ownership over the Columbia Golf Course, Land Trust 5048 property and Lot 7A. Also, plead was that Mund and his corporation were joint participants with the St. Clair County Circuit Court

in proceeding under 735 ILCS 5/2-103(b) which through its administration was procedurally defective.

Further plead was the acts of Mund and the Columbia Golf Club Inc. were done intentionally to deprive Constitutional Rights of Ruth S. Reeves including the taking of property interests and liberty interests under the Fourteenth Amendment of the United States Constitution. The prerequisite to state a cause of action was more than met since this Honorable Court has held that there is a two step approach for a cause of action to be stated under a 1983 Civil Rights action. There must (1) be a deprivation of a right secured by the Constitution and laws of the United States and (2) the defendant must have acted under color of state law. *Lugar v. Edmundson Oil Company Inc.*, 457 U.S. 922, 930 (1982).

The St. Clair County Circuit Court's Findings of Fact and Conclusions of Law are erroneous when determining no cause of action was stated. App. 26a-30a. Also, the Majority of the Appellate Court of Illinois, Fifth District finding that Mund nor his corporation acted under color of state law contradicts United States Supreme Court precedent. App. 14a. In *Wyatt v. Cole*, 504 U.S. 158, 112 S. Ct. 1827 (1992) this Court held a private party filing a replevin suit and the party's attorney could be held liable without qualified immunity when a replevin statute and its administration were found unconstitutional. Private parties that invoke a defective statutory scheme can be found to be acting under color of state law and denying a constitutional right. *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982). An erroneous Quiet Title Action is similar in design to an erroneous Replevin action in that pre-emptive strikes by litigation to promote the unlawful taking of property qualify as state

action. Mund and his corporation have engaged in enough corruption of judicial power as private litigants to be amenable to a 1983 action. *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). Corruption of judicial power does not mean the Court is a willing participant, but that through defectively administered procedures Mund and his corporation have filed an action out of fraud. Fundamental Constitutional Rights under the Fourteenth Amendment were denied Ruth Reeves. Specifically, Mund filed a Supplemental Affidavit (as referenced in the Nature of the Case) which showed he didn't pay in full for the Columbia Golf Course and didn't pay at all for Land Trust 5048 property.

The Dissent of the Appellate Court of Illinois, Fifth District states the correct rules of law that apply to the 1983 action plead on behalf of Ruth Reeves. App. 22a-24a. First, the Dissent cites *Wilson v. Garcia*, 471 U.S. 261 (1985) for the correct Statute of Limitations which is two years pursuant to the personal injury statute of Illinois. There is no dispute that the Counterclaim was timely filed on July 20, 2000 in reaction to Mund and his corporation filing the erroneous Quiet Title actions on February 10, 2000. Also, the Dissent disagrees with the Circuit Court and the Majority of the Appellate Court that prior Federal decisions bar the pleading of the 1983 action. There is no case law that states the dismissal of a RICO action in 1999 prohibits the filing of a 1983 action in 2000 when the conduct of acting under color of State Law occurred in 2000. Further, the Dissent also points out that Mund never even filed a Motion to Dismiss based on failure to state a cause of action. App. 23a-24a. The erroneous rulings of the Circuit Court, the Majority of the Appellate Court, and the Orders of the Illinois Supreme Court refusing to hear the instant appeal are in direct contradiction with *Wilson v. Garcia*, 471 U.S.

261 (1985). App. 33a-34a. The math is simple the erroneous Quiet Title actions were filed in February 2000 and the corresponding Counterclaim pursuant to 42 U.S.C. § 1983 was filed in July 2000.

For the foregoing reasons the Petition for a Writ of Certiorari should be granted and upon taking the case the Judgment of the Circuit Court, the Rule 23 Order of the Appellate Court, and the Orders of the Illinois Supreme Court should all be reversed and/or vacated by this Honorable Court.

C. Application of the Supremacy Clause to the State Court Decisions

The St. Clair County Circuit Court precluded the 1983 action of Ruth Reeves in part because it felt that Louis Mund and his Corporation were entitled to Summary Judgment on their Quiet Title Claims under 735 ILCS 5/13-109 and 110 (2000) for Lot 7A. App. 26a-30a. These statutes authorize a claim of adverse possession if there is color of title gained in good faith and seven years of uninterrupted adverse possession occurs with payment of real estate taxes. The basis for color of title for Mund and his corporation was the supposed purchase of the Columbia Golf Course and properties known as Land Trust 5048. Yet, the documentation offered by Mund did not remotely show complete payment for these properties. In fact in March 1993 an attorney named Arthur Morris sent to Ruth Reeves a letter claiming that Lot 7A had been omitted from the sale of property to Louis Mund. The letter claimed that Mund had paid for the Land Trust 5048 property and correspondingly the Columbia Golf Course when in fact Mund did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048

property. Also, the property is now being systematically conveyed to a family corporation of Michael Frierdich and his relatives. As referenced, in the Nature of the Case, Michael Frierdich was the attorney who handled the estate of George Reeves and then the affairs of his widow Ruth Reeves. All the properties at issue passed through the Estate of George Reeves and the affairs of Ruth Reeves when Frierdich was the attorney handling the transactions. This was done through Land Trusts where Ruth Reeves was the main beneficiary or through the Reeves' family corporation GRR Investment Co. Inc.

In *Wood v. Glos et al.*, 257 Ill. 125, 100 N.E. 516 (Ill. 1912) the Illinois Supreme Court held "the beginning of a suit terminates the running of the statute of limitations." The Majority of the Appellate Court affirmed the granting of Summary Judgment for Respondent's Quiet Title Claim when this case was not even found by the Majority. App. 12a-13a. In 1998 a Federal Lawsuit was indisputably filed by Ruth Reeves (now deceased), Rebecca Brown (Ruth's daughter), and Timothy Reeves (grandson of Ruth Reeves) requesting in part the return of disputed properties known as Lot 7A, the Columbia Golf Course, and Land Trust 5048 property. The Majority of the Appellate Court refused to follow the *Woods v. Glos* decision despite acknowledging the Federal Lawsuit was filed within the seven year period of adverse possession claimed by Louis Mund for Lot 7A. App. 12a-13a. A copy of the *Woods v. Glos* decision was included within the Record on Appeal before the Appellate Court. Also, the decision of the Appellate Court conflicts with *McConnell v. Jones et al.*, 332 Ill. 620, 623-624,

164 N.E. 186, 187-188 (Ill. 1928) where the Illinois Supreme Court held:

> The possession which is required by this statute is a seven year possession and the payment of taxes which is required is the payment during the seven years of all taxes legally assessed on the lands, but seven years must intervene between the time of first payment of taxes and the date of bringing of the suit.

The Majority of Appellate Court inferred facts that were not supported by the Record on Appeal. App. 13a-14a. Mund claimed adverse possession for periods of 1992-1998 with first payment of taxes for 1992 being made in June 1993 and the last payment for 1998 being made on August 30, 1999. Suit was filed by Respondent Mund in February 2000 which was clearly less than seven years from the first payment of taxes. Mund attached to his Second Amended Complaint tax receipts for the years 1990 and 1992-1998. Yet, no tax receipt was attached to show payment for 1991. The Majority of the Appellate Court acknowledged that there was no documentary proof that tax bills were sent for the period of June 1991 to June 1993, yet the Appellate Court inferred payment between June 1991 to June 1993 based on an affidavit of Louis Mund. The documentation in the Record on Appeal showed the seven year period for adverse possession started in June 1993, not June 1991 or June 1992. The decision of the Appellate Court did not follow Illinois Supreme Court precedent and affirmed the granting of summary judgment by the Circuit Court. App. 14a. The Illinois Supreme Court denied leave to appeal and any leave for reconsideration. App. 33a-34a.

These decisions and orders of the Illinois State Courts have precluded the pursuit of the Counterclaims filed by Ruth Reeves including the 1983 Federal Civil Rights action

Here, the Majority of the Appellate Court ignored Federal Precedent on Voluntary Dismissals where all proceedings are treated as a nullity and leave the parties as if the action had never been brought. *National R.R. Passenger Corp. v. JAMAW*, 915 F.2d 43, 48 (1st Cir. 1990). In November 1997 the United States District Court for the Southern District of Illinois granted voluntary dismissal to Ruth Reeves in a one count malpractice action brought against Michael Frierdich. Pursuant to the Federal Court granting the Voluntary Dismissal it was understood by the newly hired Counsel for Ruth Reeves that the Discovery in the case including the deposition of Ruth Reeves could not be used in a subsequent lawsuit. Further, the deposition was not taken as a whole in a light most favorable to Ruth Reeves which is required under Illinois Law when considering Summary Judgment. *In Re Estate Of Berry*, 277 Ill. App. 3d 1088, 1092, 661 N.E.2d 1150, 1153 (Ill. App. 5th Dist. 1996). The deposition was conducted by attorney Jack Strellis who was partners with Otto Faulbaum the former partner of Michael Frierdich. This was not disclosed to Ruth Reeves and Strellis eventually withdrew as Counsel when a questionable settlement agreement was set aside by the District Court. All of this is in the Record on Appeal and overlooked by the Majority of the Appellate Court. App. 10a-11a.

The reading of the Circuit Court decision precludes the 1983 action filed in Counterclaim III on behalf of Ruth Reeves because no claim for malicious abuse of process was plead. App 29a. Malicious Abuse of Process is a an Illinois State Tort claim. This is not required when pleading a 1983

Civil Rights action. This violates the Supremacy Clause of the Constitution since outright bad State law has been allowed to circumvent the prosecution of a Federal Cause of Action. Additionally, the Majority of the Appellate Court also determined that Mund and his corporation were not acting under color of state law. Yet, no Federal Standard as set out in *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 941 (1982) was followed by the Majority of the Appellate Court. App. 14a. Only erroneous Illinois Law was offered by the Appellate Court for not allowing the Federal Cause of Action to go forward. In *Howlett v. Rose*, 496 U.S. 356, 365 (1990) this Honorable Supreme Court held:

> Whether the constitutional rights asserted by petitioner were given due recognition by the [Court of Appeal] as a question as to which the [petitioner is] entitled to invoke our judgment, and this [he has] done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support.

The Circuit Court appeared to dismiss with prejudice the three Counterclaims plead by Ruth Reeves. App. 26a-30a. These Counterclaims included Breach of Contract, Ejectment, and the 1983 Civil Rights action. Specifically, the Circuit Court found pursuant to 735 ILCS 5/2-619(a)(4) and (5) that a prior judgment in the RICO action by the Federal District Court in January 1999 and the affirming of the Judgment by the Seventh Circuit barred the Counterclaims brought against Mund and his Corporation.

However, Mund was the party that initiated the new litigation by filing an erroneous Quiet Title action on land he already claimed to own. The Circuit Court also had stricken the affirmative defenses plead on behalf of Ruth Reeves. Primarily, the Circuit Court by adopting the Findings of Fact and Conclusions of Law (drafted by Mund's attorney) dismissed the three Counterclaims and struck the affirmative defenses based on multiple statutes of limitations. App. 26a-30a. Many of these statute of limitations had no relevance at all to the actual causes of action and certainly had no relevance to the affirmative defenses. App. 26a-30a.

The Majority of the Appellate Court found the first Counterclaim for Breach of Contract to be time barred under 735 ILCS 5/13-206 which allows ten years for prosecution of a written contract. App. 16a-17a. However, under 735 ILCS 5/13-206 the limitation period of ten years starts to run anew when there is "other written evidence of indebtedness." The March 1993 letter from attorney Arthur Morris showed such indebtedness since the letter claimed Mund had paid his debt for the properties involved when in fact he did not. The Majority of the Appellate Court found the letter did not reaffirm the existence of a debt since it asserted all payments due had been made in an accelerated fashion. App. 16a. Yet, the Record on Appeal established Mund and his corporation did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048 property. The letter from attorney Arthur Morris established a debt that was not paid Without the debt being paid there was no color of title gained in good faith to Quiet Title on Lot 7A. Correspondingly, the Majority of the Appellate Court affirmed the dismissal of the Ejectment Counterclaim because it felt Mund had lawful ownership and possession of the properties involved. App. 14a. However, as stated the Record

on Appeal established Mund and his corporation did not pay in full for the Columbia Golf Course and paid nothing for Land Trust 5048 property. The Majority of the Appellate affirmed the dismissal of Counterclaim III which plead deprivation of valid constitutional rights under 42 U.S.C § 1983. This was done as an afterthought with no in depth reasoning. App. 14a. Further, the Majority of the Appellate Court affirmed the striking of affirmative defenses because according to the Majority the affirmative defenses had no nexus to the lawsuit. App. 18a. In essence the Majority of the Appellate Court found the Counterclaims and the affirmative defenses to be time barred. This was done pursuant to many different reasons than originally entertained by the trial judge. App. 18a-19a.

The Dissent of the Appellate Court stated that under 735 ILCS 5/13-206 there existed genuine issues of fact as to the first Counterclaim. This is because the correct application of 735 ILCS 5/13-206 was applied by the Dissent. App. 21a-22a. There never was based on the Record on Appeal only one conclusion that could be drawn as to the running of the limitation period. Under Illinois Law unless the parties do not dispute the facts, or only one conclusion can be drawn a dismissal based on a Statute of Limitation is in error. This is because under the Discovery Rule which Illinois follows no dismissal is proper when issues of fact exist as to the running of the limitation period. *Vogt v. Bartelsmeyer*, 264 Ill. App. 3d 165, 173, 636 N.E.2d 1185, 1190-1191 (Ill. App. 5th Dist. 1994). Also, as stated there was a letter in March 1993 from attorney Arthur Morris which did reaffirm the transactions for the land. This in itself should have renewed the ten year limitation period under 735 ILCS 5/13-206. Correspondingly, with the first Counterclaim being valid under Illinois Law then the Second Counterclaim which plead Ejectment should

not have been dismissed. The Dissent of the Appellate Court correctly noted that a claim for Ejectment has a twenty year Statute of Limitations under 735 ILCS 5/13-101. App. 22a. Further, as the Dissent stated there were no allegations or evidence contained within the Record on Appeal that Mund or his corporation were in possession of the subject property for more than twenty years preceding the filing of the second Counterclaim. App. 22a. The Trial Court dismissal of the Ejectment action and the affirming of the dismissal by the Appellate Court were in error under Illinois Law. The dismissal of Counterclaims I and II was not justified under Illinois Law. Correspondingly, the dismissal of Counterclaim III should not have been affirmed since the Trial Court and the Majority of the Appellate Court reasoned that the dismissal of State claims justified the dismissal of the Federal Civil Rights action. Also, as stated previously the dismissal of the 1983 action in Counterclaim III pursuant to a Statute of Limitation was clearly in direct contradiction with *Wilson v. Garcia*, 471 U.S. 261 (1985). The Trial Court and the Majority of the Appellate Court also held that the affirmative defenses of Ruth Reeves were in part time-barred. The Dissent of the Appellate Court correctly noted there is no Statute of Limitation for an affirmative defense under Illinois Law. App. 24a. *See Westbank v. Maurer*, 276 Ill. App. 3d 553, 564, 658 N.E.2d 1381, 1390 (Ill. App. 2nd Dist. 1995).

The nonfederal grounds put forward for dismissal of the Counterclaims and the striking of the affirmative defenses were not justified pursuant to any fair and substantial support as required by this Honorable Court. *Howlett v. Rose*, 496 U.S. 356, 365 (1990). The dismissal of the State claims in Counterclaims I and II and the striking of the affirmative defenses was not supported under Illinois Law and should

not have been used to justify dismissal of the Federal Civil Rights action in Counterclaim III. *Howlett v. Rose*, 496 U.S. 356, 365 (1990).

Here, in the instant case, the Illinois Supreme Court by denying the Petition for Appeal as a Matter of Right or in the Alternative Petition for Leave to Appeal on December 5, 2002 and then leave to file a Motion for Reconsideration only endorsed the erroneous rulings of the Circuit Court and the Appellate Court. App. 33a-34a. Specifically, Illinois Supreme Court Rule 317 grants an Appeal as a Matter of Right when lower Illinois Courts via their decisions deny constitutional rights. This is a case of an attorney named Michael Frierdich using Mund to now take control over the Columbia Golf Course, Land Trust 5048 property, and Lot 7A. The Courts of Illinois and the United States should not be used to assist an attorney named Michael Frierdich through third parties such as Mund and his corporation to take the property of his former client Ruth Reeves (now deceased). For the foregoing reasons the Petition for a Writ of Certiorari should be granted and upon taking the case the Judgment of the Circuit Court, the Rule 23 Order of the Appellate Court, and the Orders of the Illinois Supreme Court should all be reversed and/or vacated by this Honorable Court.

CONCLUSION

Unequivocally, the State Law decisions of the Circuit Court of St. Clair County, Illinois, the Appellate Court of Illinois, Fifth District, and the Illinois Supreme Court if allowed to stand will circumvent the pursuit of a Federal Cause of Action under 42 U.S.C § 1983 and corresponding Constitutional Rights. The Statute of Limitations for a Federal Cause of Action under 42 U.S.C. § 1983 should not be misapplied and erroneous State Law should not be permitted to preclude superior Federal Law. For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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